

ORIGINAL
FILED

FEB 24 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

1 Martin K. Deniston (State Bar No. 106737)
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3 **EDELMAN & DICKER LLP**
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5 Attorneys for Defendant
6 Coudert Brothers LLP and Defendants identified in Exhibit 1

7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 SENORX, INC.,

10 Plaintiff,

11 v.

12 COUDERT BROTHERS, LLP, and
13 DOES 1 – 500,

14 Defendants.

Case No:

C 07

1075

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1452
AND BANKRUPTCY RULE 9027

SC

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21 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

22 PLEASE TAKE NOTICE that Defendants Coudert Brothers LLP, the debtor
23 and debtor in possession in a Chapter 11 case pending in the United States
24 Bankruptcy Court for the Southern District of New York, Case No. 06-12226
25 (RDD), joined by its co-defendants and former partners Charles E. Aster, Steven
26 H. Becker, Philippe Bennett, Pamela T. Church, Charles H. Critchlow, Edmund S.
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1 Cohen, Jeffrey E. Cohen, James C. Colihan, William K. Coulter, Richard N. Dean,
 2 Richard De Palma, Robert L. Eisen, Joseph Farrell, Kay Georgi, Tara K. Giunta,
 3 Kevin W. Goering, Deborah Goldstein, Michael J. Hagan, Robert E. Hanlon,
 4 Gerard V. Hannon, Andrew Hedden, Janet Hernandez, Stephen M. Hudspeth, W.
 5 Michael Kelly, Frederick P. Konta, George J. Martin, Jr., Brian McGunigle, Barry
 6 Metzger, Owen Nee, Marilyn S. Okoshi, Richard M. Ornitz, Kenneth R. Page,
 7 Robert F. Pietrowski, Jr., Darrell Prescott, Clyde E. Rankin, III, Richard Reilly,
 8 Thomas Rice, Olga Sirodova, James B. Sitrick, Roger D. Stark, Edward H.
 9 Tillinghast, III, Charles H. Wagner, Roger B. Wagner, Christopher M. Wells,
 10 Anthony Williams, Mary F. Voce, John M. Gurley, and Carol B. Stubblefield
 11 (collectively, "Individual Partner Defendants") hereby remove to this honorable
 12 Court the State Court action described below:

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 17 1. On October 27, 2004, Plaintiff SenoRx, Inc. commenced this action
 18 for legal malpractice in the Superior Court of the State of California for the County
 19 of San Francisco, captioned *SenoRx, Inc. vs. Coudert Brothers, LLP, and Does 1-*
 20 *500*, CGC 04435849. An Answer on behalf of Coudert Brothers LLP was filed on
 21 January 21, 2005. A true and correct copy of all process and pleadings are
 22 attached hereto and incorporated as Exhibit "1."

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 25 2. On November 3, 2005, and on January 25, 2006, SenoRx filed Doe
 26 amendments with respect to the Complaint for purposes of substituting specifically
 27 named individual defendants for fictitiously named defendants. On those dates,
 28

1 SenoRx named Doe defendants, including the Individual Partner Defendants who
2 are former limited liability partners of Coudert Brothers LLP and none of whom
3 are California residents or rendered any services to SenoRx.
4

5 3. In March 2006, a demurrer was filed on behalf of the Individual
6 Partner Defendants, arguing that the partners of a limited liability partnership who
7 were not involved in the provision of services to SenoRx have no vicarious liability
8 for the liabilities of the partnership with respect to such services. The court
9 sustained this demurrer, and sustained three subsequent demurrers on the same
10 grounds, each time giving SenoRx leave to amend its complaint.
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12 4. On September 22, 2006, Coudert Brothers LLP filed a Chapter 11
13 Bankruptcy Petition, in the United States Bankruptcy Court for the Southern
14 District of New York entitled In re Coudert Brothers LLP, Case No. 06-12226.
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16 5. The Fourth Amended Complaint was filed on November 8, 2006. On
17 January 23, 2007, the court overruled the Individual Partner Defendants' demurrer
18 to the Fourth Amended Complaint.
19

20 6. On January 31, 2007, SenoRx filed a proof of claim in the Coudert
21 Brothers LLP bankruptcy case, and this action seeks the same recovery as the
22 claim set forth on that proof of claim.
23

24 7. Pursuant to Bankruptcy Rule 9006(b)(1), the time within which Civil
25 Actions may be removed under U.S.C. Section 1452 and Bankruptcy Rule 9027(a)
26 was extended by 90 days, through and including March 21, 2007, by United States
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1 Bankruptcy Judge Robert D. Drain of the Southern District of New York. A true
2 and correct copy of the Order Extending the 90-Day Period Within Which to
3 Remove is attached hereto and incorporated as Exhibit "2."

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5 8. This action is one which may be removed by any party pursuant to the
6 provisions of 28 U.S.C. Sections 1452 and 1334 and Bankruptcy Rule 9027. In
7 this case Plaintiff SenoRx claims that the Individual Partner Defendants are
8 allegedly liable as guarantors of any judgment obtained against Coudert Brothers
9 LLP to the extent of Coudert Brothers LLP's self-insured retention under the
10 insurance policy applicable to this case if Coudert Brothers LLP does not satisfy
11 the self-insured retention. Because the claim set forth by Plaintiff SenoRx against
12 the Individual Partner Defendants is based on their alleged guarantee of any
13 judgment based upon the liability of Coudert Brothers LLP, litigation of the
14 alleged liability of the Individual Partner Defendants would lead to indemnity
15 claims against Coudert Brothers LLP thus affecting the bankruptcy estate. Further,
16 Coudert Brothers LLP's bankruptcy estate is affected by continuing litigation
17 against the Individual Partner Defendants, as the defense costs of such litigation
18 will deplete the bankrupt estate and potentially the insurance policies belonging to
19 Coudert Brothers LLP.


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21 9. This is a non-core proceeding as it is not a cause of action created or
22 determined by federal bankruptcy laws. Coudert Brothers LLP and the Individual
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1 Partner Defendants do not consent to final orders or judgment of the bankruptcy
2 judge.

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4 10. Notwithstanding this removal, Coudert Brothers LLP and the
5 Individual Partner Defendants do not waive and specifically reserve any and all
6 objections, exceptions or defenses to the Operative Complaint (Fourth Amended
7 Complaint) herein, including but not limited to, moving to have this matter
8 dismissed, stayed and/or transferred to another court.
9

10
11 Dated: February 21, 2007

12 WILSON, ELSE, MOSKOWITZ,
13 EDELMAN & DICKER LLP

14 By: 
15 Martin K. Deniston
16 Attorneys for Defendant
17 COUDERT BROTHERS LLP and
18 Defendants identified in Exhibit 1
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JS 44 - CAND (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I. (a) PLAINTIFFS

SenoRx, Inc.

DEFENDANTS

COUDERT BROTHERS LLP, Charles E. Aster, Steven H. Becker, Philippe, Bennett, etc. [see Exhibit 1]

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT New York
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael J. Piuze (State Bar No. 51342)
LAW OFFICES OF MICHAEL J. PIUZE
11755 Wilshire Blvd., Suite 1170
Los Angeles CA 90025
310-312-1102

ATTORNEYS (IF KNOWN)

Martin K. Deniston (State Bar No. 106737)
WILSON, ELSER, MOSKOWITZ, EDELMAN & DI
555 South Flower Street, Suite 2900
Los Angeles, CA 90071
213-443-5100

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For diversity cases only)

(PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ Original Proceeding
☒ Removed from State Court
☐ Remanded from Appellate Court
☐ Reinstated or Reopened
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) This is a Notice of Removal being filed pursuant to USCS Bankruptcy Rule 9027 and 28 U.S.C. Section 1452..

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

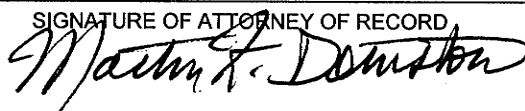
VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

February 21, 2007

SIGNATURE OF ATTORNEY OF RECORD



Martin K. Deniston

EXHIBIT 1

Case No.:

SENORX V. COUDERT BROTHERS LLP AND DOES 1 - 500

Charles E. Aster,
Steven H. Becker,
Pamela T. Church,
Charles H. Critchlow,
Edmund S. Cohen,
Jeffrey E. Cohen,
James C. Colihan,
William K. Coulter,
Richard N. Dean,
Richard De Palma,
Robert L. Eisen,
Joseph Farrell,
Kay Georgi,
Tara K. Giunta,
Kevin W. Goering,
Deborah Goldstein,
John M. Gurley,
Michael J. Hagan,
Robert E. Hanlon,
Gerard V. Hannon,
Andrew Hedden,
Janet Hernandez,
Stephen M. Hudspeth,
W. Michael Kelly,
Frederick P. Konta,
George J. Martin, Jr.,
Edwin S. Matthews, Jr.,
Brian McGunigle,
Barry Metzger,
Owen Nee,
Marilyn S. Okoshi,
Richard M. Ornitz,
Kenneth R. Page,
Robert F. Pietrowski, Jr.,
Darrell Prescott,
Clyde E. Rankin, III,

Richard Reilly,
Thomas Rice,
Olga Sirodoeva,
James B. Sitrick,
Roger D. Stark,
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Mary F. Voce,
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Christopher M. Wells,
Anthony Williams,
Philippe Bennett